FAE Missoula Hospital, LLC
4751 Broadway
Denver, CO 80216
Kenneth Wolf, Manager
ken@streamlinedesigns.biz
Max Wolf, Manager
maxwolf.fae@gmail.com

April 21, 2025

Missoula City Council
435 Ryman Street
Missoula, MT 59802

Via Email to: council@ci.missoula.mt.us
and City Clerk mrehbein@ci.missoula.mt.us
and City Attorney sudburyr@ci.misoula.mt.us

Re: Appeal – March 5, 2025 Historic Preservation Commission Decision:
FAE Missoula Hospital, LLC Historic Preservation Permit Application
for demolition of the Fort Missoula Post Hospital at 3255 Lt. Moss Road

Dear City Council Members,

Please consider this the formal appeal by FAE Missoula Hospital, LLC (FAE) of the Historic Preservation Commission (HPC) appeal of the Historic Preservation Commission's (HPC) decision to deny the Historic Preservation Permit (HPP) for demolition of the Old Post Hospital at 3255 Lt. Moss Road. This appeal is submitted under Missoula Municipal Code Sections 20.85.085 and 20.85.100, and in accordance with Rule 34 of the City Council Rules.

The HPC's decision to deny the application was not only erroneous, and unsupported by substantial evidence, but the Commission member's questions, discussion and final determination clearly shows that the HPC's members are biased, lack the necessary skills to properly apply the guidelines and provisions of Section 20.85.085 J, and were determined to find any excuse they could to deny the demolition application. As detailed below, the decision contradicted recommendations from City staff, misinterpreted applicable law, and failed to account for critical evidence provided by the applicant.

This appeal is brought under Section 20.85.085 of the Missoula Zonin Regulations, specifying that appeals of the HPC's decisions are made to the Missoula City Council. That regulation further provides that the appeal must follow the procedures of Section 20.85.100. Accordingly, we request that the HPC transmit its entire record of proceedings to the City Council, for their review. These materials should include but not be limited to

documents and presentations generated for the March 5, 2025 hearing on the Historic Preservation Permit to demolish the Ft, Missoula Hospital, and are those described below:

1. Ft. Missoula Commons Historic Preservation Application by DVG Architecture and Planning P.C.
2. Historic Preservation Permit Review-staff determination
3. HPC 3rd party review of FAE's appraisal
4. Historic Preservation Review-Old Post Hospital Demolition Permit by DVG Architecture and Planning P.C.
5. Historic Preservation Permit Record of Decision by Elizabeth Johnson
6. Any email or text communication amongst Commission members or with third parties
7. Most importantly, the audio/video transcript of the March 5, 2025 hearing, with a particular focus on the Commission's discussion through voting for denial. An objective observer will see that the Commission, and in particular, Chair Paul Filicetti and Vice-chair Crystal Herzog, both preservation architects at A & E Design, are searching for a "crack" in our presentation, that they could use as an excuse to deny our application. They asked the most irrelevant questions, and kept delving and delving, and what will be shown in this Appeal, is that the final reasons for denial are totally erroneous.

The regulations state that an appeal must be sustained if the Council finds error. We believe the HPC once again erred in its treatment of FAE Missoula Hospital, LLC and its review of the submitted application.

HISTORICAL BACKGROUND FORT MISSOULA HOSPITAL

The Old Post Hospital was built in 1911 and was maintained as a medical facility for several decades. The hospital closed in 1947/1948 and remained closed, left vacant and decaying from the closing in 1947/1948 until purchased by Western Montana Regional Community Mental Health (WMRMH) in 1963. It should be noted that in the early 1960's, there was a fire in the attic, which damaged the roof structure. Some shoring was installed, but the damage was not adequately repaired.

WMRMH occupied only the first floor of the building, and walled off the basement, 2nd floor and third floor, with those floors continuing to degrade over time. FAE's purchase was in 2019, after the deterioration, decay and lack of maintenance on 75% of the structure, lasted from 1947 to 2019 or a total of 72 years.

In using the first floor, WMRMH not only walled off the top floors, but they also laid insulation on the entire 2nd floor to try and maintain warmth on the first floor. The heating system was suspect, and they had to use space heaters throughout the first floor. The electrical system was archaic, and the space heaters constantly blew the fuses.

After several attempts to repurpose the hospital by WMRMH or prospective buyers, WMRMH vacated the property in 2017 and put the hospital up for sale. In the property disclosure statement created in January 2018, they confirm the issues with the heating system, the need to insulate the floor of the 2nd floor, electrical breaker issues, that all plumbing had been removed from top floors and basement, and that some upper floor windows were missing. They also describe the physical condition of the 2nd and 3rd floors as POOR, and major damage to the property. The disclosure also indicates that the roof tiles were refurbished in 2008.

When FAE purchased the property in 2019, the initial intent was to rehabilitate the hospital into a pristine office building. The FAE's principal owners' primary business for 30 years was to preserve both historical and architecturally significant buildings, primarily in Denver and Kansas City. After purchasing the hospital, we came to realize that as a stand-alone project, the hospital was not economically feasible. The redevelopment costs were higher than expected, and not knowing the market well enough, market rates were significantly lower than in Denver and Kansas City. In order to make the project economically feasible, we added housing and commercial buildings. There was a need for housing, and in all of Ft. Missoula, there are no services i.e. hair salon, coffee shop etc. After an exhausting three (3) years, our Historical Preservation Permit was denied at an HPO hearing on May 3, 2023. We thought it was shocking that knowing that a larger project would be required to save the hospital, opponents would rather see the hospital continue to decay.

With no other options, FAE filed for a demolition permit. The process started in February of 2024, and our Historic Preservation Demolition Permit was denied on March 5, 2025.

ARCHITURAL REPORT AND APPRAISAL

As part of the application, there was a detailed architectural report detailing the rehabilitation costs to convert the hospital into an office building. There is also a detailed appraisal confirming what the hospital's market value would be once restored into an office building using current building codes.

The analysis by our two experts resulted in the following:

1. The construction costs to rehabilitate $10,740,000
2. The market value for resale of the redeveloped building $ 4,000,000

Our appraisal was reviewed by a third party consultant hired by Elizabeth Johnson, and **he concurred with our appraisers analysis.**

So to be clear, as a stand-alone project, FAE would need to incur costs of $10,740,000 and end up with an office building whose fair market value based on rental income would be worth $4,000,000. This results in an **economic loss of -$6,740,000!**

SECTION 20.85.085 HISTORIC PRESERVATION PERMIT

SECTION 20.85.085 J CRITERIA AND PROCEDURE FOR REVIEW OF RELOCATION AND DEMOLITION OF HISTORIC RESOURCES

SECTION 20.85.085 J.10 APPLICATION REQUIREMENTS

Simply put, there are three (3) things that the Applicant has to prove in order to receive a Stage one preliminary demolition permit.

1. Certificate of Economic Hardship. Whether the structure in its current condition maintains a viable economic life. Or in other terms, would failure to issue a permit result in unreasonable economic hardship to the viability of the property.

   This typically applies to a building that might be struggling but is generating some form of income. Clearly does not apply here. The hospital cannot generate ANY income without a large injection of money. It was abandoned and in complete disrepair.

   This section also describes additional requirements for "income producing property." Maintenance records and a comparative assessment for the utilization of all financial incentives, currently available including Federal Tax Credits, grants, etc.

   We do not believe this applies to an abandoned building that isn't income producing. Regardless, as will be discussed further, Crystal Herzog made a big deal about failing to spend money maintaining the hospital building and used it as a basis for denial. The Commission complained that we removed the heating system. The building was vacant, the heating system was not operational, portions were removed during asbestos abatement, and there was no water to freeze in the building. The building hadn't been maintained for 75 years, and what would that mean to "maintain" the building. This was just one of many attempts to deny the application, despite compliance.

   We believe that the assessment for the utilization of financial incentives also only applies to an operating building that needs help. Not a building that required funding of $10,740,000 and results in an office building worth $6,740,000. Elizabeth Johnson, HPO, required it, and we contacted probably 20 entities, for grants, tax credits, etc, to no avail.

   In recommending approval, Elizabeth Johnson, HPO, confirms the structure does not maintain viable economic life, and even if grants or tax credits were available, they would not be sufficient to finance the project.

   At the hearing, we tried to explain to the Commission, that even if you could get some grant money, you still have a project that makes no economic sense. With a

$10,740,000 budget, bank financing would be required, and no bank is going to loan money for a redevelopment project that results in a $6,740,000 loss. We even had a banking expert testify. It didn't make a difference. The Commission used as a basis for denial, that we did not explore all financing avenues. This was just one of many erroneous attempts to "find" a crack in our application.

2. Feasibility Study/Economic Analysis Return. Whether the structure is capable of generating a reasonable economic return if rehabilitated.

   As established by our architect, appraiser and HPC's third party consultant, the **$10,740,000 cost does not generate a reasonable economic return.**

   Elizabeth Johnson, HPO, in recommending approval states "The Post Hospital's economic viability is severely impacted by the rehabilitation costs that would be incurred to adaptively reuse the structure."

3. Bona Fide Attempt To Sell and Relocate. The section is primarily discussing placing the building up for sale and relocation.

   We did all of the things required to try and sell and relocate the property.

   Elizabeth Johnson, HPO, in recommending approval of our demolition permit, states "The applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation, or rehabilitation of the structure, and no such alternative exists.

   Let's not forget FAE Missoula Hospital tried for three (3) years and $800,000 to preserve and renovate the hospital as part of the Ft. Missoula Commons.

   As will be further discussed, Crystal Herzog, as a basis for denial, states that we may have checked all the boxes, but our application is not competent or complete and believes that the hospital has economic viability. Crystal Herzog offers no real evidence. One more attempt to "find" a crack in our application.

Section 20.85.085 K Demolition by Neglect

We are including this Section at this time, because it is a section of the Code, that the Commission is primarily trying to use as a basis for denial. If Demolition by Neglect exists, then it can be argued that the Applicant has not satisfied Section 20.85.085 J.8 (c) economic hardship, because the economic hardship was self-created. In other words, most of the decay, damage and deterioration that has caused the building to fall into a state of disrepair, in the deterioration of the exterior appurtenances or architectural features, and requiring an investment of $10,740,000, has taken place since 2019, and is of FAE's doing. The Commission, spearheaded by Paul Filicetti and Crystal Herzog attempted to use this Section as the final nail in the coffin. This will be discussed more at length, but there has been no proof offered that there is any significant deterioration since our ownership, interior or exterior. There has been vandalism, beyond our control. We had the property completely

fenced off for years at a cost of approximately $40,000. Rather than considering that a positive attempt on our part, Crystal Herzog criticized us, because she could have "jumped" the fence. Another example of this Commission's tunnel vision in an all-out effort to deny our application. To stop break-ins, we boarded all the first floor and basement windows. We also installed cameras. Nothing has deterred vandals.

HISTORIC PRESERVATION PERMIT RECORD OF DECISION-GENERAL

We hope that City Council takes the time to review the documents and listen to the Commission's discussion, questions of FAE representatives and the final vote. Please take the time to review the pictures attached to David Grays presentation. Those pictures were taken at the time of purchase in 2019. We might also point out that none of the Commission members requested a walk-through of the building. In fact, they were invited to see the interior during our first Ft. Missoula Commons development project, and they refused. So, any opinion of the building's condition on their part is purely conjecture.

We also want to refer you to Elizabeth Johnson's findings, wherein she states, "The evidence of owner's efforts was insufficient, especially in light of the evidence offered by the public and organizations at the hearing and the HPC members' own experience in historic preservation-including other buildings at Fort Missoula." Evidence? What evidence? Someone coming up to the podium and giving their opinion, with no real evidence and FAE not having the opportunity to question, is no evidence. Crystal Herzog stating that she did a project at Ft. Missoula, and she knows that the hospital can be rehabilitated for less and is economically viable, is no evidence. It's just her attempt to stop the demolition permit out of bias with no real foundation.

HISTORIC PRESERVATION PERMIT RECORD OF DECISION-BASIS FOR DENIAL

Based on Elizabeth Johnson, HPO's record of decision, which in reviewing the hearing tape, is not entirely complete, there are four (4) grounds for denial:

1. Demolition by Neglect. Pursuant to Section 20.85.085 K, denial of the demolition permit would not result in unreasonable hardship for FAE, **if proven** that the economic hardship was FAE's **own doing**. For the Commission to deny based on Demolition by Neglect, they would need to show:
    a. Most of the deterioration was during FAE's ownership-there is no proof offered by the HPO or the HPC. 75% of the building has been abandoned since 1947 or 78 years. FAE has owned it 6 years. There was no real proof offered that there has been any significant deterioration during FAE's ownership.
    b. There was significant deterioration during FAE's ownership, and the actual cost to repair-there is no proof offered by HPO or HPC of any costs associated with our ownership.
    c. That most of the $10,740,000 cost to rehabilitate was due to deterioration during Fae's ownership-no proof offered.

d. Findings with no real facts-The Commission's statement "Because the evidence consistently demonstrated a self-created hardship and demolition by neglect…..
Once again, the Commission led by Paul Filicetti in order to deny the demolition permit, came up with a self-created basis for Demolition by Neglect.

Commission was in error applying Demolition by Neglect.

2. HPC concluded that the application package failed to demonstrate a bona fide effort on the part of the owner to find reasonable alternatives that would result in the preservation, renovation, or adaptive reuse of the property. The evidence of owner's evidence was insufficient, especially in light of evidence offered by the public and organizations at the hearing and the HPC members' own experience in historic preservation. For the Commission to deny the demolition permit based on this "conclusion", they would need to establish several things:
    a. If the HPC is referring to our sale and relocation attempt, they would have to show some deficiencies-none offered.
    b. If the HPC is referring to having made a bona fide effort to find a reasonable alternative based on the public and the HPC members' assertion that the hospital has viable economic life-no evidence offered. Not only was no evidence offered, but there also wasn't even any competent detailed conclusions offered by the HPC. However, we offered an expert architectural report and an appraisal report, that were substantiated by the HPC's third party consultant, and the HPC stated that our evidence was insufficient. One more attempt to "find" a crack in our application.
    c. Lack of evaluation by a qualified structural engineer led to an under informed assessment of the building's integrity. We aren't sure where Paul Filicetti was going with this one, but we told the HPC that a structural engineer had done an evaluation when we submitted Ft. Missoula Commons. Just one more attempt to "find" a crack in our application.
    d. If the HPC is referring to Owner's failure to explore more non-profit partnerships or residential condominiums-there are no funding sources for a project that loses $6,740,000 and I doubt they were really suggesting residences. Just one more attempt to "find" a crack in the apllication.

    Commission was in error applying these reasons for denial of the demolition permit.

In addition to reversing the HPC"s denial and approving the demolition permit, we would ask the Council to approve without conditions. Once approved, we will proceed to work with Elizabeth Johnson, HPO, on a redevelopment plan. If during this stage, the zoning code changes, we should be able to proceed under the then existing code we had been working under or decide to adjust our redevelopment plan to proceed under the new code. It should be our option.

I would also ask that you rely on the record and this Appeal letter be considered a sufficient form of brief.

Respectfully submitted,

FAE Missoula Hospital, LLC

Max Wolf Kenneth Wolf

BRIEF RECAP

1. Staff Recommendation for Approval

The Historic Preservation Officer (HPO), Elizabeth Johnson, recommended preliminary approval of the demolition permit with conditions, as documented in the staff report dated February 27, 2025. This recommendation was based on findings that the application met the review criteria established in Missoula Municipal Code Title 20.85.085.J.

2. Compliance with Review Criteria Under Title 20.85.085.J.9

The application satisfied all of the legal criteria required for approval as outlined in Missoula Municipal Code Title 20.85.085.J.9. These criteria include Economic Viability, Reasonable Alternatives, Mitigation Efforts, and Relocation Feasibility.

a. Economic Viability (20.85.085.J.9-a/b)

The economic analysis provided by Thomas G. Stevens, MAI, SRA, and independently reviewed by Kembel, Kosena & Company, demonstrated a projected negative return on investment of -78.97% with estimated renovation costs of $9,900,000. This analysis clearly established that the structure is not capable of generating a reasonable economic return if preserved, restored, or rehabilitated.

b. Reasonable Alternatives (20.85.085.J.9-c)

Efforts were made to find reasonable alternatives, including listing the property for sale at a nominal price with financial incentives, conducting comprehensive structural, economic, and environmental analyses, and engaging professionals and stakeholders to assess feasible options.

3. Improper Claims of Demolition by Neglect

The HPC erroneously attributed the building's deteriorated condition to the applicant. The Old Post Hospital has been largely abandoned since 1948, long before the applicant's ownership. Despite good-faith efforts to protect the building, including fencing, boarding up windows, and engaging professionals, allegations of demolition by neglect are baseless.

4. Lack of Collaboration and Constructive Alternatives

The HPC failed to engage constructively in our efforts to find solutions to preserve or adaptively reuse the building. Instead, the process was marked by obstruction and inconsistent standards applied to the applicant's efforts.

5. Conflicts of Interest

The decision-making process was compromised by participation from individuals with clear conflicts of interest:

CONCLUSION

The Historic Preservation Commission's decision was erroneous, procedurally improper, and unsupported by substantial evidence. The numerous errors in the HPC's findings, process, and application of standards are each independently sufficient to overturn their decision.

Any one of these errors is sufficient to overturn the HPC's decision denying Fort Missoula Commons' application for the hospital demolition permit. We respectfully request that the City Council reverse the HPC's decision and grant the Historic Preservation Permit (HPP) application.